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 CLERK OF COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 155 P

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6 Attorneys for Plaintiff  
 ROSA MARGARITA RIVERA

8 IN THE UNITED STATES DISTRICT COURT  
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO/OAKLAND DIVISION

10 ROSA MARGARITA RIVERA,

11 v.  
 12 Plaintiff,

13 PORTFOLIO RECOVERY ASSOCIATES,  
 14 LLC, a Delaware limited liability company;  
 15 LEGAL RECOVERY LAW OFFICES, INC., a  
 16 California corporation; and ANDREW PAUL  
 17 RUNDQUIST, individually and in his official  
 capacity;

18 Defendants.

19 Plaintiff, ROSA MARGARITA RIVERA, based on information and belief and investigation of  
 20 counsel, except for those allegations which pertain to the named Plaintiff or her attorneys (which are  
 21 alleged on personal knowledge), hereby makes the following allegations:

22 **I. INTRODUCTION**

23 1. Defendants wrongfully sued Plaintiff in a collection action attempting to collect a  
 24 defaulted consumer debt that was not incurred by Plaintiff or lawfully owed by Plaintiff. Defendants  
 25 were put on notice several times in the months following the filing of their collection action against  
 26 Plaintiff herein that their collection efforts were directed at the wrong person. Defendants continued  
 27

MEJ

Case No. CV 13 2322

COMPLAINT

## DEMAND FOR JURY TRIAL

15 United States Code § 1692 *et seq.*  
 California Civil Code § 1788 *et seq.*  
 Malicious Prosecution

1 their collection efforts against Plaintiff long after Defendants had actual knowledge that the debt being  
2 collected was not incurred by Plaintiff or lawfully owed by Plaintiff. As a direct and foreseeable result  
3 of Defendants' wrongful actions, Plaintiff suffered injury, including substantial emotional distress.  
4

5       2. This is an action for actual damages, statutory damages, punitive damages, attorney  
6 fees and costs brought by an individual consumer for Defendants' violations of the Fair Debt Collection  
7 Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), which prohibit debt collectors from  
8 engaging in abusive, deceptive and unfair practices.  
9

10      3. According to 15 U.S.C. § 1692:

11       a. There is abundant evidence of the use of abusive, deceptive, and unfair debt  
12 collection practices by many debt collectors. Abusive debt collection practices contribute to the  
13 number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of  
14 individual privacy.  
15

16       b. Existing laws and procedures for redressing these injuries are inadequate to  
17 protect consumers.  
18

19       c. Means other than misrepresentation or other abusive debt collection  
20 practices are available for the effective collection of debts.  
21

22       d. Abusive debt collection practices are carried on to a substantial extent in  
23 interstate commerce and through means and instrumentalities of such commerce. Even where  
24 abusive debt collection practices are purely intrastate in character, they nevertheless directly  
25 affect interstate commerce.  
26

27       e. It is the purpose of this title to eliminate abusive debt collection practices by  
28 debt collectors, to insure that those debt collectors who refrain from using abusive debt  
collection practices are not competitively disadvantaged, and to promote consistent State action  
29

1 to protect consumers against debt collection abuses.

2 4. Plaintiff also seeks actual damages, statutory damages, statutory penalties, punitive  
3 damages, attorney fees and costs for Defendants' violations of the Rosenthal Fair Debt Collection  
4 Practices Act, California Civil Code § 1788, *et seq.* (hereinafter "RFDCPA") which prohibit debt  
5 collectors from engaging in abusive, deceptive and unfair practices.  
6

7 5. The California Legislature has found that:

8 The banking and credit system and grantors of credit to consumers are  
9 dependent upon the collection of just and owing debts. Unfair or  
10 deceptive collection practices undermine the public confidence which is  
11 essential to the continued functioning of the banking and credit system  
12 and sound extensions of credit to consumers.<sup>1</sup>

13 6. Plaintiff further seeks actual damages, treble damages, and punitive damages for  
Defendants' bad faith, frivolous filing and malicious prosecution of a collection lawsuit against her.

14 **II. JURISDICTION**

15 7. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. §§ 1331 and  
16 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367.  
17 Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.  
18

19 8. This action arises out of Defendants' violations of the Fair Debt Collection  
20 Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA").

21 **III. VENUE**

22 9. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b), in that a  
23 substantial part of the events or omissions giving rise to the claim occurred in this judicial district.  
24 Venue is also proper in this judicial district pursuant to 15 U.S.C. § 1692k(d), in that Defendants  
25 transact business in this judicial district and the violations of the FDCPA complained of occurred in this  
26 judicial district.  
27

28 <sup>1</sup> Cal. Civil Code § 1788.1(a)(1).

#### **IV. INTRADISTRICT ASSIGNMENT**

10. This lawsuit should be assigned to the San Francisco/Oakland Division of this Court because a substantial part of the events or omissions which gave rise to this lawsuit occurred in San Francisco County.

## V. PARTIES

11. Plaintiff, ROSA MARGARITA RIVERA ("Plaintiff"), is a natural person residing in San Francisco County, California. Plaintiff is 78 years old and resides in a residential care facility. Plaintiff is a "consumer" within the meaning of 15 U.S.C. § 1692a(3), and a "debtor" within the meaning of Cal. Civil Code § 1788.2(h), and a "senior citizen" within the meaning of Cal. Civil Code § 1761(f). Plaintiff has standing to bring this action because Defendants claimed that Plaintiff was obligated to pay a nonexistent debt, and Defendants attempted to collect that nonexistent debt from Plaintiff by filing and maintaining a sham lawsuit against her.

12. Defendant, PORTFOLIO RECOVERY ASSOCIATES, LLC ("PORTFOLIO"), is a Delaware limited liability company engaged in the business of collecting debts in this state with its principal place of business located at: 120 Corporate Boulevard, Suit 100, Norfolk, Virginia 23502. PORTFOLIO may be served as follows: Portfolio Recovery Associates, LLC, c/o National Registered Agents Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904. The principal business of PORTFOLIO is the collection of consumer debts using the mails and telephone and PORTFOLIO regularly attempts to collect debts alleged to be originally due another. PORTFOLIO is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6) and Cal. Civil Code § 1788.2(c). PORTFOLIO is vicariously liable to Plaintiff for the acts of LEGAL RECOVERY LAW OFFICES, INC., and ANDREW PAUL RUNDQUIST.<sup>2</sup>

<sup>2</sup> See, *Fox v. Citicorp Credit Servs.*, 15 F.3d 1507, 1516 (9th Cir. 1994) (“[W]e must conclude that Congress intended the actions of an attorney to be imputed to the client on whose behalf they are taken”) and *Martinez v. Albuquerque Collection Servs.*, 867 F. Supp. 1495, 1502 (D. N.M. 1994) (“Debt

1           13. Defendant, LEGAL RECOVERY LAW OFFICES, INC. (hereinafter "LRLO"), is  
2 a California corporation engaged in the business of collecting debts in this state with its principal place  
3 of business located at: 5030 Camino de la Siesta, Suite 340, San Diego, California 92108. LRLO may  
4 be served at the address of its Agent for Service of Process at: Legal Recovery Law Offices, Inc., c/o  
5 Richard Sitter, Agent for Service, 5030 Camino de la Siesta, Suite 340, San Diego, California 92108.  
6 The principal business of LRLO is the collection of debts using the mails and telephone, and LRLO  
7 regularly attempts to collect debts alleged to be due another. LRLO is a "debt collector" within the  
8 meaning of 15 U.S.C. § 1692a(6) and Cal. Civil Code § 1788.2(c).  
9

10           14. Defendant, ANDREW PAUL RUNDQUIST (hereinafter "RUNDQUIST"), is a  
11 natural person, a licensed attorney in the state of California, and is or was an employee, agent, officer  
12 and/or director of LRLO at all relevant times. RUNDQUIST may be served at his current business  
13 address at: Andrew Paul Rundquist, Legal Recovery Law Offices, Inc., 5030 Camino de la Siesta, Suite  
14 340, San Diego, California 92108. The principal purpose of RUNDQUIST's business is the collection  
15 consumer debts due or alleged to be due another. RUNDQUIST is regularly engaged in the business of  
16 collecting consumer debts by filing and maintaining numerous civil debt collection lawsuits on behalf  
17 of others and obtaining judgments in those lawsuits by utilizing the U.S. Mail, telephone and internet.  
18 RUNDQUIST is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6). Plaintiff is informed  
19 and believes, and thereon alleges that RUNDQUIST is liable for the acts of LRLO because he sets and  
20 approves LRLO collection policies, practices, procedures and he directed and participated the unlawful  
21 activities described herein.  
22

23           15. At all times herein mentioned, each of the Defendants was an officer, director,  
24 agent, servant, employee and/or joint venturer of his co-defendants, and each of them, and at all said  
25  
26  
27  
28 collectors employing attorneys or other agents to carry out debt collection practices that violate the  
FDCPA are vicariously liable for their agent's conduct").

1 times, each Defendant was acting in the full course and scope of said office, directorship, agency,  
2 service, employment and/or joint venture. Any reference hereafter to "Defendants" without further  
3 qualification is meant by Plaintiff to refer to each Defendant, and all of them, named above.

4 **VI. FACTUAL ALLEGATIONS**

5       16. Plaintiff is informed and believes, and thereon alleges that on a date or dates  
6 unknown to Plaintiff, an unrelated third-party with the name "Rosa Rivera" is alleged to have incurred a  
7 financial obligation, namely a consumer credit account issued by HSBC Card Services (III), Inc.  
8 (hereinafter "the alleged debt"). Plaintiff is informed and believes, and thereon alleges that the alleged  
9 debt was incurred by "Rosa Rivera" primarily for personal, family or household purposes and is  
10 therefore a "debt" as that term is defined by 15 U.S.C. § 1692a(5) and a "consumer debt" as that term is  
11 defined by Cal. Civil Code § 1788.2(f).

12       17. Plaintiff is informed and believes, and thereon alleges that sometime after "Rosa  
13 Rivera" defaulted on her payments, the alleged debt was sold, assigned or otherwise transferred to  
14 PORTFOLIO for collection.

15       18. On or about May 22, 2012, Defendants filed a lawsuit against Plaintiff in the  
16 Superior Court of California, San Francisco County captioned *Portfolio Recovery Associates, LLC v.*  
17 *Rosa Rivera, et al.*, Case No. CGC-12-520992 (hereinafter the "*Portfolio v. Rivera* complaint") which  
18 sought to collect \$2,461.18 in principal, interest at the statutory rate of 10% from January 26, 2011, and  
19 reasonable attorney fees and costs pursuant to a nonexistent contract. Plaintiff is informed and believes,  
20 and thereon alleges that the *Portfolio v. Rivera* complaint was drafted and signed by RUNDQUIST on  
21 behalf of LRLO and PORTFOLIO. A true and accurate copy of the *Portfolio v. Rivera* complaint is  
22 attached hereto, marked Exhibit "1," and by this reference is incorporated herein.

23       ///  
24  
25  
26  
27  
28

1           19. The *Portfolio v. Rivera* complaint (Exhibit "1") falsely states that:

2           Defendant(s) are over the age of 18 and indebted to Plaintiff for credit received through  
3           purchases/cash advances and/or monies loaned and received and furnished to the  
4           Defendant(s) by the original creditor, HSBC CARD SERVICES III, INC., and all related  
5           finance charges and/or late fees incurred pursuant to the terms and conditions of the  
6           contract(s).

7           20. At no time did Plaintiff receive credit or borrow any monies from PORTFOLIO or  
8           HSBC Card Services III, Inc.

9           21. The *Portfolio v. Rivera* complaint (Exhibit "1") falsely states that:

10          Defendant(s) agreed to pay these monies to the Original Creditor as provided for in the  
11         agreement between Defendant(s) and Original Creditor. The terms and conditions under  
12         which Defendant(s) agreed to repay these monies are set forth in a written credit card  
13         and/or loan agreement. Defendant(s) consented to these terms either by an authorizing  
14         signature on the application and/or agreement or by Defendant(s) use of the credit  
15         instrument and/or monies provided.

16          22. At no time did Plaintiff enter into a written credit card agreement or loan  
17         agreement with PORTFOLIO or HSBC Card Services III, Inc., or sign a credit application or loan  
18         agreement with PORTFOLIO or HSBC Card Services III, Inc. At no time did Plaintiff agree to pay any  
19         monies to PORTFOLIO or HSBC Card Services III, Inc., on the alleged debt.

20          23. The *Portfolio v. Rivera* complaint (Exhibit "1") falsely states that:

21          Billing statements were mailed to the Defendant(s).

22          24. Plaintiff is informed and believes, and thereon alleges that neither PORTFOLIO or  
23         HSBC Card Services III, Inc., mailed billing statements to Plaintiff for the alleged debt. At no time did  
24         Plaintiff receive billing statements from PORTFOLIO or HSBC Card Services III, Inc.

25          25. The *Portfolio v. Rivera* complaint (Exhibit "1") falsely states that:

26          Within the past four (4) years, on or about December 31, 2008, the Defendant(s)  
27         breached the agreement by failing to pay the Original Creditor.  
28          ///

1           26. At no time has there been a agreement between Plaintiff and PORTFOLIO or  
2 HSBC Card Services III, Inc., nor did Plaintiff breach any agreement with PORTFOLIO or HSBC Card  
3 Services III, Inc.

4           27. The *Portfolio v. Rivera* complaint (Exhibit "1") falsely states that:

5           The Original Creditor and Defendant(s) entered into a written contract(s) wherein at the  
6 request of Defendant(s), the Original Creditor extended credit and/or provided financing  
7 to the Defendant(s). In return, Defendant(s) agreed to make payment(s) in accordance  
8 with the terms and conditions of the contract.

9           28. At no time did Plaintiff enter into a written contract with PORTFOLIO or HSBC  
10 Card Services III, Inc., nor did Plaintiff request that PORTFOLIO or HSBC Card Services III, Inc.,  
11 extend credit to Plaintiff nor did Plaintiff agree to make payments to PORTFOLIO or HSBC Card  
12 Services III, Inc., in accordance with the terms and conditions of a written contract.

13           29. The *Portfolio v. Rivera* complaint (Exhibit "1") falsely states that:

14           The Original Creditor sent to Defendant(s) bills reflecting, *inter alia*, all charges  
15 incurred with the Account(s), the payment due, and the total balance due.

16           30. Plaintiff is informed and believes, and thereon alleges that neither PORTFOLIO or  
17 HSBC Card Services III, Inc., mailed billing statements to Plaintiff for the alleged debt. At no time did  
18 Plaintiff receive billing statements from PORTFOLIO or HSBC Card Services III, Inc.

20           31. The *Portfolio v. Rivera* complaint (Exhibit "1") falsely states that:

21           The Account(s) was stated in writing by and between the Original Creditor and  
22 Defendant(s) and on such statements a balance(s) of \$2,461.18 was ultimately stated as  
23 due and owing.

24           32. At no time was an account stated in writing between Plaintiff and PORTFOLIO or  
25 HSBC Card Services III, Inc., nor did Plaintiff ever agree that she was indebted to PORTFOLIO or  
26 HSBC Card Services III, Inc., in any amount whatsoever.

27           ///

1           33. The *Portfolio v. Rivera* complaint (Exhibit "1") falsely states that:

2           There is now due, owing, and unpaid from Defendant(s) to Plaintiff the above stated  
3           balance owed for purchases, cash advances and/or monies loaned, and finances charges  
4           [sic] and/or late fees incurred pursuant to the terms and conditions of the contract(s).

5           34. At no time did Plaintiff ever become indebted to PORTFOLIO or HSBC Card  
6           Services III, Inc., on the alleged debt.

7           35. The *Portfolio v. Rivera* complaint (Exhibit "1") falsely states that:

8           Plaintiff alleges that there is an Account(s) stated by operation of law wherein the  
9           Original Creditor billed Defendant(s) for the credit balance and received no objection to  
10           it.

11           36. At no time was an account stated by operation of law between Plaintiff and  
12           PORTFOLIO or HSBC Card Services III, Inc., nor did Plaintiff ever agree that she was indebted to  
13           PORTFOLIO or HSBC Card Services III, Inc., in any amount whatsoever.

14           37. Plaintiff is informed and believes, and thereon alleges, that Defendants made and  
15           used false statements and misrepresentations in an attempt to collect a nonexistent debt from Plaintiff.

16           38. Plaintiff is informed and believes, and thereon alleges that Defendants  
17           misrepresented that a debt was lawfully incurred by the Plaintiff.

18           39. Plaintiff is informed and believes, and thereon alleges, that the *Portfolio v. Rivera*  
19           complaint (Exhibit "1") misrepresented the character and legal status of a nonexistent debt that  
20           Defendants attempted to collect from Plaintiff.

21           40. Plaintiff is informed and believes, and thereon alleges, that the *Portfolio v. Rivera*  
22           complaint (Exhibit "1") misrepresented the compensation which may be lawfully received by  
23           Defendants for the collection of a nonexistent debt from Plaintiff.

24           41. Plaintiff is informed and believes, and thereon alleges, that Defendants attempted  
25           to collect a nonexistent debt from Plaintiff, an action that could not be lawfully taken.

1           42. Plaintiff is informed and believes, and thereon alleges, that the *Portfolio v. Rivera*  
 2 complaint (Exhibit "1") attempted to collect interest, fees or other charges from Plaintiff that were not  
 3 permitted by law.

4           43. After receiving the *Portfolio v. Rivera* complaint (Exhibit "1"), Plaintiff's  
 5 granddaughter contacted Defendants by telephone and informed Defendants that Plaintiff never had an  
 6 account with HSBC Card Services III, Inc., that Plaintiff had no outstanding or unpaid credit card  
 7 accounts, that Plaintiff was a senior citizen, and that Defendants were suing the wrong person.  
 8 Thereafter, Defendants had actual knowledge that they had sued the wrong person and that their  
 9 collection activities were directed at a senior citizen.

10          44. When Defendants refused to dismiss the *Portfolio v. Rivera* complaint (Exhibit  
 11 "1"), Plaintiff was required to retain legal counsel at her own expense thereby incurring actual damages  
 12 in the form of attorney fees and costs.<sup>3</sup>

13          45. Thereafter, on or about July 10, 2012, Plaintiff's counsel mailed a letter to  
 14 Defendants which reads as follows:

15           My office is representing Rosa Rivera in the above named case. Upon receiving service  
 16 of the named Complaint, my client contacted your office regarding the alleged debt that  
 17 is the subject of this suit. She has informed your office that this allegation of indebted is  
 18 wholly false; that she does not and has not ever had an HSBC Card Services, Inc. III  
 19 account identified in the Complaint as having the last four digits 3146. My client has  
 20 also informed you that she is of the belief that your client has sued the wrong person.

21           This letter is to communicate again my client's contentions. My client has made a  
 22 thorough investigation of her financial records and reviewed all three credit reports; she  
 23 has found no indication that the HSBC account belongs to her. In fact, my client has no  
 24 outstanding debt owed on any credit card account. There is no reason for your client to  
 25 continue this litigation without proper evidence of indebtedness.

26          <sup>3</sup> See, *Owens v. Howe*, 365 F. Supp. 2d 942, 948 (N.D. Ind. 2005) (the attorney fees and cost incurred  
 27 defending a state court lawsuit are properly awarded as actual damages under 15 U.S.C. § 1692k(a)(1),  
 28 and not under 15 U.S.C. § 1692k(a)(3)); *Lowe v. Elite Recovery Solutions L.P.*, 2008 U.S. Dist. LEXIS  
 8353, at \*9 (E.D. Cal. Feb. 4, 2008) (awarding attorney fees court costs incurred defending state court  
 action as actual damages under 15 U.S.C. § 1692k).

I urge that your office to conduct a thorough investigation and dismiss this suit with prejudice as there is no basis for continuing your collection efforts. Please feel free to contact me if you wish to discuss this matter further.

46. A true and accurate copy of Plaintiff's counsel's July 10, 2012, letter is attached  
hereto, marked Exhibit "2," and by this reference is incorporated herein.

47. Despite being notified again that Defendants were suing the wrong person,  
Defendants continued to pursue the *Portfolio v. Rivera* complaint (Exhibit "1") against Plaintiff.

48. Thereafter, the parties engaged in discovery and on or about October 12, 2012,  
Plaintiff's counsel emailed a letter to Defendants which reads in relevant part as follows:

Upon review of your client's discovery response served September 14, 2012, it has  
become even more apparent that my client is not liable for the debt alleged in this action.  
My client has never incurred any debt on an HSBC Card Services III, Inc. account, or on  
a Union Plus Credit account. My client's discovery responses, served on your office  
Oct. 10, 2012, further support her position that she is not indebted to your client in any  
amount.

Please be advised that my client is a disabled senior citizen and that your client's  
collection efforts have caused her great stress and mental anguish. It is my hope that you  
will convince your client to cease prosecution of this meritless suit as this only  
exacerbates her condition.

49. A true and accurate copy of Plaintiff's counsel's October 12, 2012, letter is  
attached hereto, marked Exhibit "3," and by this reference is incorporated herein.

50. Despite being notified again that Plaintiff was a disabled senior citizen and that  
they were suing the wrong person, Defendants continued to pursue the *Portfolio v. Rivera* complaint  
(Exhibit "1") against Plaintiff.

51. Thereafter, on or about March 22, 2013, Plaintiff's counsel sent an email to  
Defendants which reads as follows:

I have reviewed your client's responses to Defendant's Request for Admissions, Set  
Two. In Request for Admission No. 1, your client admitted that, "The person who YOU  
allege to owe a financial obligation is identified as Rosa Rivera with her social security

1 number having the last four digits XXX-XXX-7546 [...]"

2 After a thorough investigation, I have confirmed that my client's last four digits of her  
3 social security number do not match the numbers you have identified. Further, my client  
4 has never resided at the address that is listed in the Union Plus credit card monthly  
billing statements.

5 None of the personal identifiers your client produced during discovery accurately  
6 describe my client. I have informed your office on numerous occasions that my client  
7 has never applied for credit nor incurred any debt with HSBC Card Services III, Inc./  
Union Plus Credit Card. Please allow me to be absolutely clear: You have sued the  
wrong person.

8 I demand that you take immediate measures to resolve this claim of indebtedness against  
9 my client. Thank you for your attention to this matter.

10 52. A true and accurate copy of Plaintiff's counsel's March 22, 2013, email is attached  
11 hereto, marked Exhibit "4," and by this reference is incorporated herein.

12 53. Despite being notified that Plaintiff's social security number and address did not  
13 match the "Rosa Rivera" toward whom Defendants should have been directing their collection activities  
14 and that Defendants were suing the wrong person, Defendants continued to pursue the *Portfolio v.*  
15 *Rivera* complaint (Exhibit "1") against Plaintiff.

16 54. Thereafter, on or about May 8, 2013, Plaintiff's counsel emailed a letter to  
17 Defendants which reads as follows:

18 This case is scheduled for Trial this coming Monday, May 13, 2013. Why this case has  
19 not already been dismissed yet is beyond reason. I have informed your office on many  
20 occasions that my client has not incurred the debt on the HSBC/Union Plus credit card  
21 account that is the subject of this action. My client has never opened, authorized nor  
22 used the referenced account.

23 On March 22, 2013 I emailed you to confirm that my client's last four digits of her  
24 social security number does not match the numbers you have identified. I also informed  
25 you that my client has never lived at nor used the address that is listed in the monthly  
26 billing statements. I informed you in no uncertain terms that you have sued the wrong  
person. I asked that the case be dismissed with prejudice. I received no response.

27 My client is a disabled senior citizen and your continued collection efforts have caused  
28 her great stress and mental anguish. She is also of limited mobility and if forced to

1 travel to Court on Monday to defend this meritless action, her condition will only be  
2 exacerbated. Once again, I am demanding that you take immediate action to dismiss this  
3 case with prejudice before the trial date. Your prompt attention to this matter is  
appreciated.

4 55. A true and accurate copy of Plaintiff's counsel's May 8, 2013, letter is attached  
5 hereto, marked Exhibit "5," and by this reference is incorporated herein.

6 56. Despite being repeatedly notified both by Plaintiff's granddaughter and Plaintiff's  
7 counsel that Defendants had targeted and sued the wrong "Rosa Rivera," Defendants continued to  
8 prosecute the state court collection action until days before the scheduled trial.

9 57. Thereafter, Defendants filed a Request for Dismissal Without Prejudice in the  
10 state court action on May 9, 2013. A true and accurate copy of Defendants' Request for Dismissal  
11 Without Prejudice is attached hereto, marked Exhibit "6," and by this reference is incorporated herein.

12 58. These facts show that Defendants continued to prosecute the state court collection  
13 action against Plaintiff – the wrong "Rosa Rivera" – for 10 months after they had been notified that  
14 Plaintiff was a senior citizen who did not lawfully owe the debt being collected.

15 59. As a result of Defendants' abusive debt collection practices, Plaintiff has incurred  
16 actual damages in an amount to be determined at trial.

17 60. As a senior citizen subjected to Defendants' abusive, deceptive and unfair  
18 collection practices, Plaintiff is entitled to treble damages pursuant to Cal. Civil Code § 3345.

19 **VII. CLAIMS**

20 **FAIR DEBT COLLECTION PRACTICES ACT**

21 61. Plaintiff brings the first claim for relief against Defendants under the Fair Debt  
22 Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.*

23 62. Plaintiff incorporates all paragraphs in this Complaint as though fully set forth  
24 herein.

1           63. Plaintiff is a "consumer" as that term is defined by the FDCPA, 15 U.S.C. §  
2 1692a(3).

3           64. Defendant, PORTFOLIO, is a "debt collector" as that term is defined by the  
4 FDCPA, 15 U.S.C. § 1692a(6).

5           65. Defendant, LRLO, is a "debt collector" as that term is defined by the FDCPA, 15  
6 U.S.C. § 1692a(6).

7           66. Defendant, RUNDQUIST, is a "debt collector" as that term is defined by the  
8 FDCPA, 15 U.S.C. § 1692a(6).

9           67. The financial obligation alleged to be owed by Plaintiff is a "debt" as that term is  
10 defined by the FDCPA, 15 U.S.C. § 1692a(5). Moreover, Defendants filed a lawsuit against Plaintiff in  
11 a attempt to collect a nonexistent debt.<sup>4</sup>

12           68. Defendants have violated the FDCPA. The violations include, but are not limited  
13 to, the following:

14               a. Defendants made and used false, deceptive and misleading representations  
15 in an attempt to collect a nonexistent debt from Plaintiff, in violation of 15 U.S.C. §§ 1692e and  
16 1692e(10);

17               b. Defendants misrepresented the character or legal status of a nonexistent  
18 debt, in violation of 15 U.S.C. § 1692e(2)(A);

19               c. Defendants misrepresented the compensation which may be lawfully  
20 received by Defendants for the collection of a nonexistent debt, in violation of 15 U.S.C. §  
21 1692e(2)(B);

22               d. Defendants misrepresented that PORTFOLIO was lawfully entitled to

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28          <sup>4</sup> See, *Heathman v. Portfolio Recovery Assocs., LLC*, 2013 U.S. Dist. LEXIS 27057, \*15-16 (S.D. Cal.  
Feb. 27, 2013).

1 collect a nonexistent debt from Plaintiff, in violation of 15 U.S.C. §§ 1692e, 1692e(5) and  
2 1692e(10);

3 e. Defendants attempted to collect a nonexistent debt from Plaintiff, an action  
4 that cannot lawfully be taken, in violation of 15 U.S.C. §§ 1692e, 1692e(5) and 1692e(10);  
5

6 f. Defendants engaged in an unfair and unconscionable practices in an attempt  
7 to collect a nonexistent debt, in violation of 15 U.S.C. § 1692f; and

8 g. Defendants attempted to collect interest, fees or other charges from Plaintiff  
9 that were not permitted by law, in violation of 15 U.S.C. § 1692f(1).

10 69. Defendants' acts as described above were done intentionally with the purpose of  
11 coercing Plaintiff to pay a nonexistent debt.

13 70. As a result of Defendants' violations of the FDCPA, Plaintiff is entitled to an  
14 award of actual damages, statutory damages, costs and reasonable attorneys fees, pursuant to 15 U.S.C.  
15 § 1692k.

16 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

18 71. Plaintiff brings the second claim for relief against all Defendants except,  
19 RUNDQUIST, under the Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), California Civil  
20 Code §§ 1788-1788.33.

21 72. Plaintiff incorporates all paragraphs in this Complaint as though fully set forth  
22 herein.

24 73. Plaintiff is a "debtor" as that term is defined by the RFDCPA, Cal. Civil Code §  
25 1788.2(h).

26 74. Defendant, PORTFOLIO, is a "debt collector" as that term is defined by the  
27 RFDCPA, Cal. Civil Code § 1788.2(c).  
28

1           75. Defendant, LRLO, is a "debt collector" as that term is defined by the RFDCPA,  
 2 Cal. Civil Code § 1788.2(c).

3           76. The financial obligation alleged to be owed by Plaintiff is a "consumer debt" as  
 4 that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(f). Moreover, Defendants filed a  
 5 lawsuit against Plaintiff in an attempt to collect a nonexistent debt.<sup>5</sup>  
 6

7           77. Defendants have violated the RFDCPA. The violations include, but are not  
 8 limited to, the following:

9                 a. Defendants made and used false, deceptive and misleading representations  
 10 in an attempt to collect a nonexistent debt from Plaintiff, in violation of Cal. Civil Code §  
 11 1788.17;<sup>6</sup>  
 12

13                 b. Defendants misrepresented the character, amount or legal status of a  
 14 nonexistent debt, in violation of Cal. Civil Code § 1788.17;<sup>7</sup>

15                 c. Defendants misrepresented the compensation which may be lawfully  
 16 received by Defendants for the collection of a nonexistent debt, in violation of Cal. Civil Code  
 17 §§ 1788.13(e), 1788.14(b) and 1788.17;<sup>8</sup>  
 18

19                 d. Defendants misrepresented that PORTFOLIO was lawfully entitled to  
 20 collect a nonexistent debt from Plaintiff, in violation of Cal. Civil Code §§ 1788.13(l) and  
 21 1788.17;<sup>9</sup>

22                 e. Defendants attempted to collect a nonexistent debt from Plaintiff, an action  
 23 that cannot lawfully be taken, in violation of Cal. Civil Code § 1788.17;<sup>10</sup>  
 24

25                 <sup>5</sup> See, *Heathman v. Portfolio Recovery Assocs., LLC*, 2013 U.S. Dist. LEXIS 27057, \*15-16 (S.D. Cal.  
 26 Feb. 27, 2013).

27                 <sup>6</sup> 15 U.S.C. §§ 1692e and 1692e(10).

28                 <sup>7</sup> 15 U.S.C. § 1692e(2)(A).

29                 <sup>8</sup> 15 U.S.C. § 1692e(2)(B).

30                 <sup>9</sup> 15 U.S.C. §§ 1692e, 1692e(5), and 1692e(10).

31                 <sup>10</sup> 15 U.S.C. §§ 1692e, 1692e(5), and 1692e(10).

1 f. Defendants engaged in an unfair and unconscionable practices in an attempt  
2 to collect a nonexistent debt, in violation of Cal. Civil Code § 1788.17;<sup>11</sup> and

3 g. Defendants attempted to collect interest, fees or other charges from Plaintiff  
4 that were not permitted by law, in violation of Cal. Civil Code §§ 1788.13(e), 1788.14(b) and  
5 1788.17.<sup>12</sup>

6 78. Defendants' acts as described above were done willfully and knowingly with the  
8 purpose of coercing Plaintiff to pay a nonexistent debt, within the meaning of Cal. Civil Code §  
9 1788.30(b).

10 79. As a result of Defendants' violations of the RFDCPA, Plaintiff is entitled to an  
11 award of actual damages in an amount to be determined at trial, pursuant to Cal. Civil Code §  
12 1788.30(a).

13 80. As a result of Defendants' willful and knowing violations of the RFDCPA,  
14 Plaintiff is entitled to an award of a statutory penalty in an amount not less than one hundred dollars  
15 (\$100) nor greater than one thousand dollars (\$1,000) against each Defendant, pursuant to Cal. Civil  
16 Code § 1788.30(b).

17 81. As a result of Defendants' violations of the RFDCPA, Plaintiff is entitled to an  
18 award of statutory damages in an amount not exceeding \$1,000 against each Defendant, pursuant to  
19 Cal. Civil Code § 1788.17.<sup>13</sup>

20 82. As a result of Defendants' violations of the RFDCPA, Plaintiff is entitled to an  
21 award of reasonable attorney's fees and costs pursuant to Cal. Civil Code §§ 1788.30(c) and 1788.17.<sup>14</sup>

22 83. Pursuant to Cal. Civil Code § 1788.32, the remedies provided under the RFDCPA

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28<sup>11</sup> 15 U.S.C. § 1692f.

<sup>12</sup> 15 U.S.C. § 1692f(1).

<sup>13</sup> 15 U.S.C. § 1692k(a)(2)(A).

<sup>14</sup> 15 U.S.C. § 1692k(a)(3).

1 are intended to be cumulative and in addition to any other procedures, rights or remedies that the  
2 Plaintiff may have under any other provision of law.

## **MALICIOUS PROSECUTION**

84. Plaintiff brings the third claim for relief against all Defendants for common law malicious prosecution.

85. Plaintiff incorporates all paragraphs in this Complaint as though fully set forth herein.

86. Defendants herein, prepared and filed a baseless, meritless lawsuit against Plaintiff,

87. Defendants herein were all actively involved in bringing and/or maintenance of the wrongful underlying lawsuit.

88. Defendants were on notice a lawsuit, based on the circumstances herein, was a "Sham."

89. No reasonable person in Defendants' above circumstances would have believed that there were reasonable grounds to bring, and/or maintain, the baseless lawsuit against Plaintiff.

90. Defendants herein acted primarily for a purpose other than succeeding on the merits of the case, including to gain leverage to extort money in an attempt to collect a nonexistent debt from Plaintiff.

91. Plaintiff was harmed, and suffered serious and severe emotional distress, as well as the panoply of psychological pressures one is expected to experience when wrongfully sued.

92. Defendants' actions, conduct, and inaction actually and proximately caused and were a substantial factor in causing Plaintiff emotional distress.

93. Defendants above acted with conscious disregard of the rights and safety of

Plaintiff and reckless indifference regarding Plaintiff and the merits of its lawsuit.

94. It was clearly foreseeable that Defendants' wrongful actions, conduct, and inaction could cause harm and severe emotional distress.

## PUNITIVE DAMAGES

95. Plaintiff is informed and believes, and thereon alleges that Defendants' conduct was fraudulent, malicious, reprehensible, despicable and oppressive and was intended to harm Plaintiff.

96. Plaintiff is informed and believes, and thereon alleges that an officer, director or managing agent of the Defendants authorized, approved and ratified Defendants' wrongful and unlawful acts described herein.

97. It is the pattern and practice, and intentional business plan of Defendants to ignore and disregard the rights of consumers such as Plaintiff. This conduct has the natural consequence to annoy, harass, oppress and abuse.

98. Defendants are liable for reasonable punitive damages in an amount sufficient to punish and educate Defendants and to educate other businesses engaged in similar activities that the courts and juries of California will not tolerate such conduct in California.

## **VIII. REQUEST FOR RELIEF**

**Plaintiff requests that this Court:**

- a) Assume jurisdiction in this proceeding;
  - b) Declare that Defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(2)(B), 1692e(5), 1692e(10), 1692f, and 1692f(1);
  - c) Declare that Defendants violated the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§ 1788.13(e), 1788.13(l), 1788.14(b), and 1788.17;
  - d) Award Plaintiff actual damages in an amount to be determined at trial, pursuant to 15

1 U.S.C. § 1692k(a)(1) and Cal. Civil Code §§ 1788.17 and 1788.30(a);

- 2 e) Award Plaintiff statutory damages in an amount not to exceed \$1,000, pursuant to 15  
3 U.S.C. § 1692k(a)(2)(A);  
4 f) Award Plaintiff a statutory penalty in an amount not less than \$100 nor greater than  
5 \$1,000 against each Defendant except RUNDQUIST, pursuant to Cal. Civil Code §  
6 1788.30(b);  
7 g) Award Plaintiff statutory damages in an amount not to exceed \$1,000 against each  
8 Defendant except RUNDQUIST, pursuant to Cal. Civil Code § 1788.17;<sup>15</sup>  
9 h) Award Plaintiff actual damages and punitive damages in an amount to be determined at  
10 trial for Defendants' malicious prosecution of Plaintiff;  
11 i) Award Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15  
12 U.S.C. § 1692k(a)(3) and Cal. Civil Code §§ 1788.17<sup>16</sup> and 1788.30(c);  
13 j) Award Plaintiff treble damages pursuant to Cal. Civil Code § 3345; and  
14 k) Award Plaintiff such other and further relief as may be just and proper.

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27  
28 <sup>15</sup> 15 U.S.C. § 1692k(a)(2)(A).  
<sup>16</sup> 15 U.S.C. § 1692k(a)(3).

1 CONSUMER LAW CENTER, INC.  
2  
3 Dated: May 22, 2013 

4 By: /s/ Fred W. Schwinn  
5 Fred W. Schwinn (SBN 225575)  
6 Raeon R. Roulston (SBN 255622)  
7 CONSUMER LAW CENTER, INC.  
8 12 South First Street, Suite 1014  
9 San Jose, California 95113-2418  
10 Telephone Number: (408) 294-6100  
11 Facsimile Number: (408) 294-6190  
12 Email Address: fred.schwinn@sjconsumerlaw.com

13 Attorneys for Plaintiff  
14 ROSA MARGARITA RIVERA

15 **CERTIFICATION PURSUANT TO CIVIL L.R. 3-16**

16 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named  
17 parties, there is no such interest to report. 

18 /s/ Fred W. Schwinn  
19 Fred W. Schwinn, Esq.

20 **DEMAND FOR JURY TRIAL**

21 PLEASE TAKE NOTICE that Plaintiff, ROSA MARGARITA RIVERA, hereby demands a  
22 trial by jury of all triable issues of fact in the above-captioned case. 

23 /s/ Fred W. Schwinn  
24 Fred W. Schwinn, Esq.

LRLO 744910-001

619-275-4010

SUITE/UNIT ISSUED  
FILED  
SUPERIOR COURT  
COUNTY OF SAN FRANCISCO 04/30/2012

1      Mark D. Walsh, SBN - 206059  
 2      Andrew P. Rundquist, SBN - 262523  
 3      Judson H. Price, SBN - 275475  
 4      Deanna Fraser, SBN - 270362  
 5      Legal Recovery Law Offices, Inc.  
 6      5030 Camino de la Siesta Ste 340  
 7      San Diego, CA 92108  
 8      800-785-4001  
 9      619-275-4010 Fax  
 10     Attorney for Plaintiff

11     2012 MAY 22 AM 8:25  
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D. STEPP

## 9      Superior Court of California, County of San Francisco

## 10     Civic Center Courthouse - LIMITED CIVIL

11     PORTFOLIO RECOVERY ASSOCIATES, LLC, Plaintiff,      Case No.: CGC-12-520992  
 12     vs.      COMPLAINT FOR MONEY  
 13     ROSA RIVERA, and DOES 1 to 10      1. Breach of Written Contract  
 14     Defendant(s),      2. Account Stated  
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819-275-4010

04/30/2012

1 informed and believes and thereon alleges that each of such fictitiously named Defendants are indebted to  
 2 Plaintiff as herein alleged, and that Plaintiff's rights against such fictitiously named Defendants arise from  
 3 such indebtedness.

4 **JURISDICTION**

5 4. This is the proper venue because at least one Defendant resides in this court's jurisdiction  
 6 and/or one Defendant resided in this court's jurisdiction at the time the contract was entered into.

7 5. The causes of action hereinafter stated is a money demand.

8 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

9 6. Defendant(s) are over the age of 18 and indebted to Plaintiff for credit received through  
 10 purchases/cash advances and/or monies loaned and received and furnished to the Defendant(s) by the  
 11 original creditor, HSBC CARD SERVICES III, INC., and all related finance charges and/or late fees  
 12 incurred pursuant to the terms and conditions of the contract(s). For valuable consideration, the original  
 13 creditor sold, assigned and/or transferred the claims underlying the causes of action set forth in this  
 14 Complaint to the Plaintiff, who is the assignee and/or sole owner of such claims with all legal rights to  
 15 pursue collection of said debt(s) from the Defendant(s), and all legal right to release or satisfy said debts(s).  
 16 This credit is identified by the Plaintiff as an account having the last four digits XXXXXXXXXX3146  
 17 (the "Account(s)").

18 7. Defendant(s) agreed to pay these monies to the Original Creditor as provided for in the  
 19 agreement between Defendant(s) and Original Creditor. The terms and conditions under which Defendant(s)  
 20 agreed to repay these monies are set forth in a written credit card and/or loan agreement. Defendant(s)  
 21 consented to these terms either by an authorizing signature on the application and/or agreement or by  
 22 Defendant(s) use of the credit instrument and/or monies provided.

23 8. //

24 9. Plaintiff and Plaintiff's assignors and/or predecessors have duly performed all conditions on  
 25 its/their part, except the conditions and covenants it was/they were excused or prevented from performing.  
 26 Despite Plaintiff's demand, Defendant(s) have not repaid Plaintiff for the charges made and/or the monies  
 27 loaned, in the amount(s) of \$2,461.18.

28 10. Billing statements were mailed to the Defendant(s). Plaintiff is unaware of any unresolved

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1 dispute concerning a billing error.

2 11. Within the past four (4) years, on or about December 31, 2008, the Defendant(s) breached the  
 3 agreement by failing to pay the Original Creditor

4 12. Plaintiff has made a demand for payment of monies owed, but Defendant(s) has either failed,  
 5 refused or neglected to pay Plaintiff as agreed. Defendant(s) are, therefore, in default under the terms of the  
 6 party's agreement.

7 13. No part of the above balance owed has been paid to date and said balance is now due and  
 8 owing from Defendant(s).

9 **FIRST CAUSE OF ACTION**

10 **(Breach of Written Contract)**

11 **(As Against All Defendants)**

12 14. Plaintiff sets forth by reference as though fully set forth below each and every allegation of  
 13 paragraph 1-13 of this Complaint.

14 15. The Original Creditor and Defendant(s) entered into a written contract(s) wherein at the request  
 15 of Defendant(s), the Original Creditor extended credit and/or provided financing to the Defendant(s). In  
 16 return, Defendant(s) agreed to make payment(s) in accordance with the terms and conditions of the contract.

17 16. The Original Creditor sent to Defendant(s) bills reflecting, *inter alia*, all charges incurred with  
 18 the Account(s), the payment due, and the total balance due. Where the debt at issue herein was a credit card,  
 19 each statement informed Defendant(s) of the duty to submit any disputes of the charges set forth in such  
 20 statement, in writing, within sixty days from the date of the statement.

21 17. Between the date of the aforementioned contract(s) to the present, Defendant(s) breached said  
 22 contract(s), by ceasing or failing to make the payment due on the Account(s).

23 18. No part of the principal sum of \$2,461.18 has been paid to date and said sum is now due and  
 24 owing by Defendant(s) to the Plaintiff.

25 19. As a direct and proximate result of Defendant(s)' breach of said written contract, Plaintiff has  
 26 been damaged in the above stated sum, together with the interest thereon at the statutory rate from January  
 27 26, 2011 plus reasonable attorney's fees and costs where allowed by law or contract or according to proof.  
 28 Plaintiff reserves the right to pray for an additional interest amount that may have accrued between

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1 December 31, 2008 and January 26, 2011.

2 **SECOND CAUSE OF ACTION**

3 **(Account Stated)**

4 **(As Against All Defendants)**

5 20. Plaintiff sets forth by reference as though fully set forth below each and every allegation of  
6 paragraph 1 through 19 of this Complaint.

7 21. The Account(s) was stated in writing by and between the Original Creditor and Defendant(s)  
8 and on such statements a balance(s) of \$2,461.18 was ultimately stated as due and owing. However,  
9 Defendant(s) has not paid the amount owing as agreed.

10 22. There is now due, owing, and unpaid from Defendant(s) to Plaintiff the above stated balance  
11 owed for purchases, cash advances and/or monies loaned, and finances charges and/or late fees incurred  
12 pursuant to the terms and conditions of the contract(s).

13 23. Plaintiff alleges that there is an Account(s) stated by operation of law wherein the Original  
14 Creditor billed Defendant(s) for the credit balance and received no objection to it.

15 24. No part of the above balance owed has been paid and said amount is now due and owing from  
16 Defendant(s) to Plaintiff, together with the interest thereon at the statutory rate from January 26, 2011 plus  
17 reasonable attorney's fees and costs where allowed by law or contract or according to proof. Plaintiff  
18 reserves the right to pray for an additional interest amount that may have accrued between December 31,  
19 2008 and January 26, 2011.

20 WHEREFORE, Plaintiff, PORTFOLIO RECOVERY ASSOCIATES, LLC prays for judgment against  
21 Defendant(s), and each of them, as follows:

- 22 1. For the balance owed in the amount of \$2,461.18;  
23 2. Interest at the statutory rate of 10% from January 26, 2011;  
24 3. For reasonable attorney's fees in according to contract, law or as according to proof, or in  
25 accordance with this court's default schedule if a default is obtained;  
26 4. For costs of suit incurred herein; and  
27 5. For such other and further relief as the court may deem proper.

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619-275-4010

04/30/2012

Dated: April 30, 2012

L  
[ ] Mark Walsh, Esq.  
 Andrew Rundquist, Esq.  
[ ] Judson H. Price, Esq.  
[ ] Deanna Fraser, Esq.  
Attorney for Plaintiff

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LRLO 744910-001

619-275-4010

04/30/2012

1. Mark D. Walsh SBN - 206059  
 2. Andrew P. Rundquist SBN - 262523  
 2. Judson H. Price SBN - 275475  
 2. Deanna Fraser SBN - 270362  
 3. Legal Recovery Law Offices, Inc.  
 3. 5030 Camino de la Siesta Ste 340  
 4. San Diego, CA 92108  
 4. 800-785-4001  
 5. 619-275-4010 Fax

6. Attorney For Plaintiffs

7. Superior Court of California, County of San Francisco

8. Civic Center Courthouse - LIMITED CIVIL

9. PORTFOLIO RECOVERY ASSOCIATES, LLC, )  
 10. Plaintiff, ) Case No.: CGC-12-520992  
 10. )  
 11. )  
 11. vs. ) AFFIDAVIT OF VENUE  
 12. ROSA RIVERA, and Does 1 to 10 )  
 12. Defendant(s) )  
 13. )  
 14. )  
 14. )

15. I, the undersigned, declare as follows:

16. 1. I am an attorney at law duly licensed to practice before all the courts of the State of California  
 17. and am an attorney with Legal Recovery Law Offices, Inc., attorney of record for plaintiffs in the above  
 18. entitled action. I am familiar with the facts set forth herein and, if called as a witness, I could and would  
 19. competently testify thereto.

20. 2. This is the proper jurisdiction for this action because this action involves an offer of  
 21. provisions of goods, services and/or credit intended for commercial use to be sold to the public primarily  
 22. for personal, family or household use and at least one defendant resides in this court's jurisdiction.

23. I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
 24. and correct.

25.   
26. Dated: April 30, 2012


[ ] Mark D. Walsh, Esq.  
 [X] Andrew P. Rundquist, Esq.  
 [ ] Judson H. Price, Esq.  
 [ ] Deanna Fraser, Esq.  
 Attorney for plaintiffs

F I L E D  
 Superior Court of California  
 County of San Francisco

MAY 22 2012  
 CLERK OF THE COURT  
 BY: John Doe  
 Deputy Clerk

FILE BY FAX

LRLO 744910-001

619-275-4010

04/30/2012

1. Mark D. Walsh SBN - 206059  
 2. Andrew P. Rundquist SBN - 262523  
 3. Judson H. Price SBN - 275475  
 4. Deanna Fraser SBN - 270362  
 Legal Recovery Law Offices, Inc.  
 5030 Camino de la Siesta Ste 340  
 San Diego, CA 92108  
 800-785-4001  
 5. 619-275-4010 Fax

6. Attorney For Plaintiffs

7. Superior Court of California, County of San Francisco

8. Civic Center Courthouse - LIMITED CIVIL

9. PORTFOLIO RECOVERY ASSOCIATES, LLC, ) C G C - 12 - 520992  
 10. Plaintiff, ) Case No.:  
 )  
 11. vs. ) DECLARATION IN SUPPORT OF REDUCED  
 12. ROSA RIVERA, and Does 1 to 10 ) FILING FEE  
 13. Defendant(s) ) [BUS AND PROF CODE § 6322.1 (C) (I)]  
 14. )  
 )  
 )

15. 1. I am an attorney duly licensed to practice law in the State of California and an associate of  
 16. Legal Recovery Law Offices, Inc., attorneys for plaintiffs. The following declaration is made of my own  
 17. knowledge and if sworn as a witness, I would and could competently testify thereto.

18. 2. This suit involves a debt which has been assigned to the plaintiffs, thus this suit may not be  
 brought in small claims court under C.C.P. § 116.420.

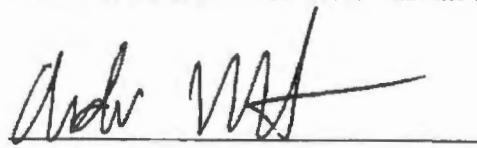
19. 3. The principal amount sought in the complaint is less than or equal to \$5000.

20. 4. Under Business and Professions Code Section 6322.1(c)(1), where a claim for money  
 21. damages falls within the monetary jurisdiction of the small claims court and is filed by an assignee who is  
 22. prohibited from filing or maintaining a claim pursuant to C.C.P. § 116.420, the filing party is entitled to a  
\$44.00 fee reduction from the uniform filing fee.

23. 5. Because this case meets the provisions of BP 6322.1(c)(1), the plaintiffs request a fee  
 reduction of \$44.00.

24. I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
 25. and correct.

26. Dated: April 30, 2012

  
 27. [ ] Mark D. Walsh, Esq.  
 28. [X] Andrew P. Rundquist, Esq.  
 [ ] Judson H. Price, Esq.  
 Attorney for plaintiffs

DECLARATION IN SUPPORT OF REDUCED FILING FEE

F I L E D  
 Superior Court of California  
 County of San Francisco  
 MAY 22 2012  
 CLERK OF THE COURT  
 BY: *[Signature]*  
 Deputy Clerk

FILE BY FAX

**Janet Ly LAW OFFICE**  
201 SPEAR STREET STE 1100 SAN FRANCISCO CA 94105

MARK D. WALSH  
LEGAL RECOVERY LAW OFFICES, INC.  
5030 CAMINO DE LA SIESTA STE. 340  
SAN DIEGO, CA 92108

July 10, 2012

Re: PORTFOLIO RECOVERY ASSOCIATES LLC. v. ROSA RIVERA  
Superior Court of California – County of San Francisco  
Case No. CGC-12-520992

VIA US Mail

Dear Counsel:

My office is representing Rosa Rivera in the above named case. Upon receiving service of the named Complaint, my client contacted your office regarding the alleged debt that is the subject of this suit. She has informed your office that this allegation of indebted is wholly false; that she does not and has not ever had an HSBC Card Services, Inc. III account identified in the Complaint as having the last four digits 3146. My client has also informed you that she is of the belief that your client has sued the wrong person.

This letter is to communicate again my client's contentions. My client has made a thorough investigation of her financial records and reviewed all three credit reports; she has found no indication that the HSBC account belongs to her. In fact, my client has no outstanding debt owed on any credit card account. There is no reason for your client to continue this litigation without proper evidence of indebtedness.

I urge that your office to conduct a thorough investigation and dismiss this suit with prejudice as there is no basis for continuing your collection efforts. Please feel free to contact me if you wish to discuss this matter further.

Regards,

Janet Ly, Esq.



Janet Ly L A W O F F I C E  
201 SPEAR STREET STE 1100 SAN FRANCISCO CA 94105

Deanna Fraser, Esq.  
Legal Recovery Law Offices  
5030 Camino De La Siesta, #340  
San Diego, CA 92108

October 12, 2012

**Re: Portfolio Recovery Associates, LLC vs. Rosa Rivera (No: CGC-12-520992)**

**FOR SETTLEMENT PURPOSES ONLY**

Dear Ms. Fraser:

Upon review of your client's discovery response served September 14, 2012, it has become even more apparent that my client is not liable for the debt alleged in this action. My client has never incurred any debt on an HSBC Card Services III, Inc. account, or on a Union Plus Credit account. My client's discovery responses, served on your office Oct. 10, 2012, further support her position that she is not indebted to your client in any amount.

As you are aware, my client has a meritorious cross-complaint against your client for various violations of the Fair Debt Collection Practices Act and the Rosenthal Fair Debt Collection Practices Act, including but not limited to 15 U.S.C. §§ 1692e, 1692e(5) and 1692e(10), and Cal. Civil Code § 1788.17 and Cal. Civil Code § 1788.13(l).

Please be advised that my client is a disabled senior citizen and that your client's collection efforts have caused her great stress and mental anguish. It is my hope that you will convince your client to cease prosecution of this meritless suit as this only exacerbates her condition.

In the interest of resolving this case without further expense and time, my client will settle this case on the terms provided in the enclosed Settlement Agreement and Mutual Release. Please let me know if the agreement is approved for signatures. Please be advised that this offer will lapse October 29, 2012. Thank you for your continued professional courtesy.

Sincerely,

s/Janet Ly, Esq.

Encl: Settlement Agreement and Mutual Release



From: "Janet Ly, Esq." <janet@janetlylaw.com>  
Subject: Re: Portfolio Recovery Associates v. Rosa Rivera CGC-12-520992  
Date: March 22, 2013 4:37:24 PM PDT  
To: Deanna Fraser <dfraser@lrio.com>

Ms. Fraser:

I have reviewed your client's responses to Defendant's Request for Admissions, Set Two. In Request for Admission No. 1, your client admitted that, "The person who YOU allege to owe a financial obligation is identified as Rosa Rivera with her social security number having the last four digits XXX-XXX-7546 [...]"

After a thorough investigation, I have confirmed that my client's last four digits of her social security number do not match the numbers you have identified. Further, my client has never resided at the address that is listed in the Union Plus credit card monthly billing statements.

None of the personal identifiers your client produced during discovery accurately describe my client. I have informed your office on numerous occasions that my client has never applied for credit nor incurred any debt with HSBC Card Services III, Inc./ Union Plus Credit Card. Please allow me to be absolutely clear: You have sued the wrong person.

I demand that you take immediate measures to resolve this claim of indebtedness against my client. Thank you for your attention to this matter.

Janet Ly, Esq.

JANET LY LAW OFFICE  
201 Spear Street Suite 1100  
San Francisco CA 94105  
Tel: (415) 230-5370  
Fax: (415) 230-5371  
[www.CalConsumerRights.com](http://www.CalConsumerRights.com)  
[janet@janetlylaw.com](mailto:janet@janetlylaw.com)

\*\*\*\*\*  
The information in this email may be privileged or confidential and is intended only for the party named above. If you are not the intended recipient, you are hereby notified that disseminating, distributing, or copying this communication is strictly prohibited. If you have received this email in error, please immediately notify this office at the number indicated above. Please be advised that email could be intercepted by third parties and may not be encrypted. It is our understanding that you consent to our communication with you via email. If this understanding is incorrect please advise this office immediately.



**Janet Ly L A W O F F I C E**  
201 SPEAR STREET STE 1100 SAN FRANCISCO CA 94105

Deanna Fraser, Esq.  
Legal Recovery Law Offices, Inc.  
5030 Camino De La Siesta, #340  
San Diego, CA 92108

May 8, 2013

**Re: Portfolio Recovery Associates, LLC vs. Rosa Rivera (No: CGC-12-520992)**

**VIA FAX to 1-619-275-4010**  
**And Email to: dfraser@lrlo.com**

Dear Ms. Fraser:

This case is scheduled for Trial this coming Monday, May 13, 2013. Why this case has not already been dismissed yet is beyond reason. I have informed your office on many occasions that my client has not incurred the debt on the HSBC/Union Plus credit card account that is the subject of this action. My client has never opened, authorized nor used the referenced account.

On March 22, 2013 I emailed you to confirm that my client's last four digits of her social security number does not match the numbers you have identified. I also informed you that my client has never lived at nor used the address that is listed in the monthly billing statements. I informed you in no uncertain terms that you have sued the wrong person. I asked that the case be dismissed with prejudice. I received no response.

My client is a disabled senior citizen and your continued collection efforts have caused her great stress and mental anguish. She is also of limited mobility and if forced to travel to Court on Monday to defend this meritless action, her condition will only be exacerbated. Once again, I am demanding that you take immediate action to dismiss this case with prejudice before the trial date. Your prompt attention to this matter is appreciated.

Sincerely,

Janet Ly, Esq.



CLAIM # 744910.001		CIV-110
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and address): LEGAL RECOVERY LAW OFFICES, INC. ANDREW P. RUNDQUIST Bar # 282523 5030 Camino De La Siesta # 340, San Diego, CA 92108		FOR COURT USE ONLY / FD SUPERIOR COURT COUNTY OF SAN FRANCISCO 2013 MAY - 9 AM 9:56 CLERK OF THE COURT DEPUTY CLERK FILE BY FAX
TELEPHONE NO.: 800-785-4001 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): PORTFOLIO RECOVERY ASSOCIATES, LLC SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 MCALLISTER STREET MAILING ADDRESS: CITY AND ZIP CODE: SAN FRANCISCO CA 94102 BRANCH NAME: CIVIC CENTER;		
PLAINTIFF/PETITIONER: PORTFOLIO RECOVERY ASSOCIATES, LLC DEFENDANT/RESPONDENT: ROSA RIVERA		CASE NUMBER: CGC-12-520992
REQUEST FOR DISMISSAL		
A conformed copy will not be returned by the clerk unless a method of return is provided with the document.		
This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court. Rules 3.760 and 3.770.)		

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1)  With prejudice (2)  Without Prejudice  
 b. (1)  Complaint (2)  Petition  
 (3)  Cross-Complaint filed by (name): \_\_\_\_\_  
 (4)  Cross-Complaint filed by (name): \_\_\_\_\_  
 (5)  Entire action of all parties and all causes of action  
 (6)  Other (specify): \_\_\_\_\_

on (date):  
on (date):

2. (Complete in all cases except family law cases.)

The court  did  did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date : 5/8/2013

Andrew P. Rundquist

TYPE OR PRINT NAME OF [X] ATTORNEY | PARTY WITHOUT ATTORNEY

(SIGNATURE)

\* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:  
 Plaintiff/Petitioner  Defendant/Respondent  
 Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date:

SIGNATURE

Attorney or party without attorney for:  
 Plaintiff/Petitioner  Defendant/Respondent  
 Cross-complainant

(To be completed by clerk)

4.  Dismissal entered as requested on (date): \_\_\_\_\_  
 5.  Dismissal entered on (date): \_\_\_\_\_ as to only (name): \_\_\_\_\_  
 6.  Dismissal not entered as requested for the following reasons (specify):  
 7.   
 a. Attorney or party without attorney notified on (date): \_\_\_\_\_  
 b. Attorney or party without attorney not notified. Filing party failed to provide  
 a copy to conform  means to return conformed copy

Date:

Clerk by, \_\_\_\_\_, Deputy

EXHIBIT

6

PLAINTIFF/PETITIONER: PORTFOLIO RECOVERY ASSOCIATES, LLC	CASE NUMBER: CGC-12-520992
DEFENDANT/RESPONDENT: ROSA RIVERA	

**COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS**

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code. 68637.).

**Declaration Concerning Waived Court Fees**

1. The court waived fees and costs in this action for (name): ROSA RIVERA
2. The person named in item 1 is (check one below):
  - a.  not recovering anything of value by this action.
  - b.  recovering less than \$10,000 in value by this action.
  - c.  recovery \$10,000 or more in value by this action. (If item 2c is checked, item 3 must be completed.)
3.  All court fees and costs that were waived in this action have been paid to the court (check one):  Yes  No.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

Andrew P. Rundquist

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY MAKING DECLARATION)

(SIGNATURE)